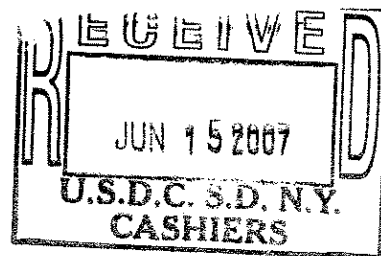


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Attorneys for Plaintiff Rubie's Costume Co., Inc.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE STEIN

RUBIE'S COSTUME CO., INC.

COMPLAINT

Plaintiff,

-against-

07 CIV 5738

BRAVADO INTERNATIONAL GROUP
MERCHANDISING SERVICES, INC. and
SLIPKNOT INC.

**PLAINTIFF DEMANDS
TRIAL BY JURY**

Defendants.

Plaintiff Rubie's Costume Co., Inc., ("Rubie's" or "Plaintiff") by and through its attorneys, Pryor Cashman LLP, as and for its complaint against Defendants Bravado International Group Merchandising Services, Inc. ("Bravado") and Slipknot Inc. ("Slipknot")(collectively, "Defendants"), alleges as follows:

NATURE OF THE ACTION

1. This is an action for a declaratory judgment that the sale and offer for sale of Plaintiff's masks and uniforms, whether or not promoted by its Stage Fright logo, violate any copyright or trademark rights of Defendants.

JURISDICTION AND VENUE

1. Plaintiff seeks a declaration of its rights pursuant to 28 U.S.C. §§ 2201(a) and 2202, to resolve an actual controversy existing between the parties within this Court's jurisdiction. Jurisdiction of the Court is proper under 28 U.S.C. § 1331 and under 28 U.S.C. § 1338(a). Plaintiff has a reasonable apprehension and fear that Defendants may commence litigation against Plaintiff to enforce Defendants' claimed intellectual property rights. Alternatively, Plaintiff asserts jurisdiction based on diversity of citizenship under 28 U.S.C. § 1332 since the action is between citizens of different states and the amount in controversy exceeds the sum of \$75,000 exclusive of interests and costs.

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and 1400(a).

THE PARTIES

4. Rubie's is a corporation organized and existing under the laws of the State of New York, with offices in Richmond Hill, New York and with its main showroom within this judicial district.

9. Upon information and belief, Bravado is a corporation organized and existing under the laws of the State of California, with offices in New York, New York. Bravado has filed authorization with the New York State Department of State indicating that process may be served on it at its New York location – 330 Seventh Avenue, 2nd Floor, New York, New York 10001.

10. Upon information and belief, Slipknot is a corporation organized and existing under the laws of the State of California, with offices in Lake Success, New York.

ALLEGATIONS COMMON TO ALL CLAIMS

I. Rubie's Costume Co., Inc.

11. Rubie's is a family-owned and run New York-based designer, manufacturer, marketer and seller of Halloween costumes and accessories which has been in business since 1951. Rubie's is believed to be the world's largest manufacturer and supplier of disguise and masquerade costumes, masks and Halloween accessories.

12. In addition to designing its own masks, costumes, and accessories, Rubie's is also in the business of marketing and selling licensed products depicting well-known characters such as Superman, Darth Vader, Harry Potter, Barbie and Shrek.

13. Extending over the last 50 years, Rubie's has designed and created countless new costume lines, many of which were inspired by then-current popular culture and trends.

14. Some time ago, Rubie's initiated design and development and then launched its "Stage Fright" costume line. The Stage Fright line consists of uniforms and masks (the "Stage Fright Products") which were inspired by the culture associated with the heavy metal genre of rock music and embodied by world renowned heavy metal rock bands such as Kiss and Black Sabbath. A new logo to be used in connection with promoting the new line was also created and developed. As such, the Stage Fright costume line includes elements commonly associated with the heavy metal rock culture, including skulls, blood and chains as well as macabre and disturbing concepts such as torture and sadomasochism.

15. In designing the Stage Fright masks, Rubie's designers used many of Rubie's long-established masks as starting points. The Rubie's designers created the Stage

Fright Products line and logo based in part by inspiration from the heavy metal, punk rock, skateboarding, S&M, and biker cultures.

16. The Stage Fright line consists of varying styles of one-piece, prison-styled jumpsuits and a line of masks which include grotesque and mangled faces, monster-like faces, a human-like pig face mask and a tear gas mask. Over all, the Stage Fright line comprises about five costumes and fourteen masks.

17. The Stage Fright logo is a skull-and-cross-bones-inspired graphic consisting of a cracked and leering human skull and two crossed, red, angular electric guitars with flames shooting from their sides crossing behind the skull (the "Stage Fright Guitars," generally, the "Stage Fright Logo"). Completing the Stage Fright Logo is a banner bearing the words "Stage Fright" in gothic-styled lettering which banner unfolds below the skull and crossing guitars. Like the Stage Fright Products, the Stage Fright Logo exemplifies a heavy metal, punk rock, skateboarder feel.

II. Slipknot and Bravado

18. Upon information and belief, Slipknot is a heavy metal rock band which employs an aggressive tone and dark and nihilistic lyrics. Upon further information and belief, when the Slipknot group performs on stage, each of the members wears a mask and a two-piece, military inspired uniform with a military influenced insignia on one arm and an elaborate "S" on the back. In the past, Slipknot uniforms also bore prominent UPC codes.

19. Upon information and belief, Slipknot markets and sells replicas of its members' uniforms and masks.

20. Upon information and belief, the Slipknot masks range from clown faces to monster faces to seeming torture facial-covering devices. Upon further information and belief, the Slipknot members frequently change their masks, sometimes within the same stage performance.

21. Upon information and belief, the Slipknot band member Paul Gray has been known to wear a mask of a pig's face while performing; fellow band member Sid Wilson has worn a gasmask on stage; James Root has worn a white mask with red markings; Mick Thomson has worn a torturer's mask; and member Joey Jordison has worn a grotesque interpretation of a mime's mask.

22. Upon information and belief, Bravado is in the business of licensing the intellectual property rights of musical performers such as Slipknot and selling related merchandise.

III. There Exists a Real and Reasonable Apprehension of Litigation

23. In a letter to Rubie's dated April 26, 2007, Kenneth A. Feinswog, Esq., counsel to Bravado, alleged that Rubie's Stage Fright uniforms and various of the Stage Fright masks "are confusingly similar to the masks worn by members of Slipknot along with confusingly similar reproductions of Slipknot uniforms." (the "April 26, 2007 Letter")(a copy of the April 26, 2007 Letter is annexed hereto as Exhibit A). In particular, Feinswog charges that six of Rubie's Stage Fright masks, those known as "Pork Chop," "Tear Gas," "Headbanger," "Death Metal," "Torture Mask" and "Goth Mask," are confusingly similar copies of masks worn by Slipknot band members. (A copy of the pages from Rubie's catalogue showing the accused masks is annexed hereto as Exhibit B).

24. Additionally, in the April 26, 2007 Letter, Bravado alleges that the Stage Fright Logo, specifically the Stage Fright Guitars, are confusingly similar to the actual guitar used and played by Slipknot's band member Mick Thomson (the "Slipknot Guitar") (A copy of a page from the Rubie's catalogue on which the Stage Fright Logo and the Stage Fright Guitars are prominently displayed is annexed hereto as Exhibit C. A copy of a photograph showing a Slipknot band member using a Slipknot Guitar is annexed hereto as Exhibit D and copies of the masks asserted by Feinswog to be Slipknot's intellectual property is attached hereto as Exhibit E).

25. In the April 26, 2007 Letter, Bravado demanded that Rubie's "immediately cease and desist all manufacture, distribution, sale and commercial exploitation of any masks, uniforms, logos and/or items related to Skipknot."

26. In response, Rubie's has repeatedly advised Bravado that the Stage Fright line was independently created and that there is no similarity of copyrightable expression or likelihood of consumer confusion with respect to the Stage Fright Products, on the one hand, and the intellectual property rights of Slipknot, on the other. Specifically, in a letter dated May 23, 2007 (the "May 23, 2007 Letter"), Rubie's explicitly advised that neither the Stage Fright Products nor the Stage Fright Logo infringe any of Bravado's intellectual property rights concerning Slipknot. (A copy of the May 23, 2007 Letter is annexed hereto as Exhibit F.)

27. Notwithstanding Rubie's unequivocal denial of Bravado's assertions of infringement, Bravado has persisted in its accusations. Bravado has made written statements indicating its intention to commence an action for copyright and/or trademark

infringement if Rubie's does not refrain from selling the Stage Fright Products at issue.

Accordingly, there exists a real and reasonable apprehension of litigation.

**IV. THE STAGE FRIGHT PRODUCTS AND LOGO DO
NOT INFRINGE ANY COPYRIGHT SLIPKNOT
AND/OR BRAVADO MAY OWN**

**A. Rubie's Created The Stage Fright Products
and Logo Independent of the Slipknot Costumes and Guitar**

28. Rubie's designed and manufactured the Stage Fright Products independent of the Slipknot Products.

29. Indeed, as stated above, Rubie's designers used long-established Rubie's masks as a starting point and, using popular culture and themes as inspiration, created the masks that now comprise the Stage Fright line. In particular, Rubie's designers drew from the distinctive cultures surrounding the punk rock, heavy metal, S&M and biker cultures in this country. Thus, the Stage Fright line incorporates elements commonly associated with these cultures such as leather, studs, blood and chains as well as general themes of darkness, fear and torture.

30. Accordingly, none of the Stage Fright Products infringe any copyrights which Slipknot or Bravado may hold.

31. Similarly, Rubie's designed the Stage Fright Logo and Stage Fright Guitars portion thereof independent of the Slipknot Guitar. Rubie's designers were certainly inspired and influenced by heavy metal bands and, as such, included crossed electric guitars and a skull as part of the Stage Fright Logo. However, the expression of this idea as reduced to the Stage Fright Logo is original to Rubie's.

32. The Stage Fright Guitars do not infringe any copyright which Slipknot or Bravado may hold in the Slipknot Guitar.

B. The Stage Fright Products Are Not Substantially Similar to the Slipknot Costumes

33. The Stage Fright Products are not substantially similar to any original copyrightable expression of the Slipknot Costumes and Masks. For example, a comparison of the Stage Fright "Pork Chop" mask and the pig face mask worn by one of the Slipknot members, reveals that the two masks are not substantially similar. The masks differ in several significant visual respects. The Stage Fright Pork Chop mask has ears that stand out from the head, the nostrils are rounded and a red ball is inserted into the mouth and held in place by a leather and metal harness.

34. In contrast, Slipknot's pig face mask has human-like ears that lie flat against the head, the nostrils are oblong in shape and come to a point at the bottom, there is no ball in the mouth, there is no apparatus to hold a ball in place, and the "forehead" is encircled by what appears to be a harness adorned by metal studs. (A copy of a photograph of the Slipknot pig face mask worn by Slipknot's band member Paul Gray is annexed hereto as the first page of Exhibit E.) In fact, the two masks are substantially *dissimilar*.

35. The Stage Fright "Tear Gas" mask, is also not substantially similar to the gasmask worn by one of Slipknot's band members. The Stage Fright Tear Gas mask fits over the front of the face, leaving the top of the head exposed. The eyeholes are round and a thin, red line appears above them and traces along the perimeter of the face and down its center. A tube or hose is affixed to the bottom portion of the mask to mimic the filter system that would appear in a real gas mask.

36. The Slipknot gas mask differs from the Stage Fright "Tear Gas" mask in several visual respects. (A copy of a photograph of the Slipknot mask worn by Sid Wilson is annexed hereto as the second page of Exhibit E.) First, the Slipknot mask is attached to the face by buckles and straps that are secured over the top of the head. The eyeholes are rounded on the bottom and angular at the top. This mask contains none of the contrasting design above the eyes and around the perimeter of the eyes and face as does the Stage Fright Tear Gas mask. Additionally, unlike the Stage Fright Tear Gas mask, the Slipknot mask is adorned with what appear to be dials on each side of the face. Additionally, the mask worn by the Slipknot member has no tube or hose at the mouth, but rather has two disks, one of which has air holes where the mouth would be. The Slipknot Tear Gas mask has an overall look that is dissimilar to the Stage Fright Tear Gas mask.

37. The Stage Fright "Headbanger" mask is also not substantially similar to the mask worn by Slipknot member Joey Jordison. The Stage Fright "Headbanger" mask has a crack running horizontally along the middle of the forehead and is visually held together by three large bolts. The cracks also run down between the eyes and onto the cheeks. The mask has heavy eyebrows, flared nostrils and facial hair below the bottom lip. The mouth is clamped shut by seven thick bars and no lips are visible.

38. By sharp visual contrast, the mask periodically worn by Slipknot's Joey Jordison consists of a white face, dark, painted lips, thick lines which ring the eyes, three dots above the left eye and a vertical line which extends downward from the forehead to the eyes and downward from the eyes to the top of the cheeks. (A copy of a photograph of the Slipknot mask is annexed hereto as the third page of Exhibit E.) Thick lines seemingly "drip" downward from the bottom lip. Unlike the Stage Fright mask, the Slipknot mask is

devoid of facial hair, the lips are clearly visible and there are no bars to clamp the mouth shut. Additionally, the forehead is not split or cracked and there are no bolts holding portions of the face together.

39. The Stage Fright "Death Metal" mask is also not substantially similar to the mask sometimes worn by Slipknot member Joey Jordison. The Rubie's Death Metal mask is set in a permanent sneer and includes a mane of wild hair. Three black lines extend from the hairline straight down to the brow area above each eye. The lines are uniform in length, shape and thickness. Small dots, also uniform in shape and size, appear directly below each line. The brow bone is pronounced and a deep furrow appears between the eyes. Dark half circles appear below each eye. Two black lines extend downward from the top of the cheek bone to the mouth. The deep creases around the mouth, bony portions of the face and clenched teeth serve to highlight the ominous look and feel of the mask. There is a swathe of black beneath the lower lip with two short lines extending downward therefrom. Most of the cleft chin is visible.

40. As described in the above paragraph, the mask periodically worn by Slipknot's Joey Jordison is visually dissimilar in many respects. Unlike the lines and dots above the eyes in the Stage Fright mask, which are symmetrical and drawn with precision, the lines and dots above the eyes of the Slipknot mask are rough and imprecise. Additionally, several "drips" appear between the eyes and near the mouth of the Slipknot mask. Moreover, unlike the Stage Fright mask, the brow bones of the Slipknot mask are entirely obscured by the large black line that encircles each eye. No lines appear between the eyes or around the mouth and the hair is straight and smooth. The chin has no cleft and is covered by the lines which have the appearance of dripping down from the bottom lip.

41. The Stage Fright "Torture" Mask is not substantially similar to the masks worn by Slipknot's Mick Thomson. The Stage Fright Torture mask is designed to look like a mask that a sadomasochist or torturer might wear. The mouth is obscured by a flesh or wound-like panel which also obscures most of the nose, though the nostrils are visible. The same flesh-like material also appears above the eyes. The rest of the mask consists of leather panels held in place by brass bolts.

42. The Slipknot mask includes a metal vent with several vertical openings covering the mouth. The planes of the face connote an almost robotic characteristic. The brow is deeply furrowed and the overall effect is menacing. (A copy of a photograph of the mask is annexed hereto as the fourth page of Exhibit E.)

43. The Stage Fright "Goth" mask is not substantially similar to the mask worn by Slipknot member James Root. The Stage Fright Goth mask consists of a white background with black, flame-like lines which extend upward from the top of each eye to the midpoint of the forehead. A curved line extends downward from the inside and outside corner of each eye and stop at the base of the nose. The lips are black. Two fang-like lines extend downward from the bottom lip and a line extends out towards the side of the face from the corners of the mouth.

44. In contrast, the eyes of the Slipknot mask are surrounded by a diamond shape. The top point of the diamond extends upward with a tapered line. The bottom point of each diamond extends downward. The bottom point of the left eye extends to the top of the cheek while the point beneath the right eye extends down the length of the face in an arc and connects to the right side of the mouth. The lips are thick and dark and the mouth

is zippered shut. (A photocopy of a picture of the Slipknot mask is annexed hereto as the fifth page of Exhibit E.)

C. The Stage Fright Uniforms Are Not Substantially Similar to the Slipknot Uniforms

45. The Stage Fright uniforms and the uniforms worn by the members of the Slipknot band are not substantially similar.

46. The Stage Fright uniforms are one-piece, prison-style jumpsuits adorned with chains and studs. The Stage Fright Logo, which consists of the Stage Fright name along with a skull and two crossed and flaming electric guitars, is prominently displayed on the front of each uniform.

47. In stark visual contrast, the Slipknot uniforms consist of pants and a matching shirt, a military-influenced insignia on one arm and an "S" in an elaborate typeface on the back of the shirt. At least for a period of time, the Slipknot uniforms also carried distinctive bar coding. No such elements are present on Rubie's Stage Fright uniforms.

D. The Stage Fright Guitars, Part of the Stage Fright Logo, Are Not Substantially Similar to the Slipknot Guitar

48. Not only are the Stage Fright Guitars and the Slipknot Guitar not substantially similar, they are strikingly *dissimilar*. As alleged above, the Stage Fright Logo consists of a cracked skull in front of two crossed electric guitars. A large portion of the bottom section of the body of each Stage Fright Guitar is cut out in a smooth arc. One side of the remaining portion of the bottom of each guitar is triangular and the other is squared off. The top portion of the body of each of the Stage Fright Guitars as depicted in the Stage Fright Logo is obstructed by the cracked and leering skull. Flames shoot from

one side of each of the Guitars. The Guitars each have five strings and the top portion or “headstock” of each consists of a small triangle.

49. Like the Stage Fright Guitars, the Slipknot Guitar also has a carved-out portion at the bottom of its body. However, that is where the visual similarities end. Unlike the Stage Fright Guitars, the Slipknot Guitar has a pointed, modified triangle carve-out at the bottom of the body. Additionally, each side of the remaining portions of the bottom of the body of the Slipknot guitar is pointed. Another significant distinction between the Stage Fright Guitars and the Slipknot Guitar is that the top portion of the body of each of the Stage Fright Guitars is obstructed by the cracked, human skull. In contrast, the top portion of the body of the Slipknot Guitar is pointed and mimics the bottom portion of the body. Of course, the Slipknot Guitar also does not have flames shooting out of its side as do the Stage Fright Guitars. Additionally, while the Stage Fright Guitars have only five strings, the Slipknot Guitar has at least six strings.

50. Moreover, the very top or the “headstock” of the Stage Fright Guitars consists of a simple triangle, while the headstock of the Slipknot Guitar is much more complex. It is markedly larger than the headstock of the Stage Fright Guitars and its perimeter design is reminiscent of the shape of a bull’s head and horns. Moreover, the Slipknot Guitar’s headstock includes the round objects used to tune the guitar, the so-called “tuning pegs,” unlike the Stage Fright headstock which has no tuning pegs.

V. THE STAGE FRIGHT PRODUCTS AND LOGO DO NOT INFRINGE ANY TRADEMARK RIGHTS BRAVADO OR SLIPKNOT MAY HOLD IN THE SLIPKNOT COSTUMES OR SLIPKNOT GUITAR

51. Neither the Stage Fright Products nor the Stage Fright Logo create a likelihood of consumer confusion, mistake or deception with Slipknot’s Costumes or the

Slipknot Guitar for numerous reasons. First, the Slipknot Costumes and Guitar are not distinctive. The Slipknot Costumes, Masks and Guitar do not serve as trademarks. Even if they were distinctive and served as trademarks uniquely identifying Slipknot as the source of its goods and/or services, the Stage Fright Products and Guitars are significantly different from the Slipknot Costumes and Guitar so as to avoid consumer confusion. Second, the Stage Fright Products and Slipknot Costumes are sold through different channels. Third, the degree of caution exercised by the typical purchaser of Stage Fright Products and Slipknot Costumes is high such that consumers are not likely to be confused. Fourth, neither Slipknot's on-stage look nor the design of the Slipknot Guitar is widely known or recognized and thus no significant goodwill or trademark rights has been established in connection therewith. The Stage Fright costume and masks do not infringe on any intellectual property rights of Slipknot under 15 U.S.C. § 1125(a).

A. Slipknot Costumes and Guitar are Not Distinctive

52. The various and seemingly ever-changing uniforms and masks worn by the Slipknot band members are not distinctive and, in fact, could not be more generic. They embody the general themes and images common to the heavy metal rock band culture. Such elements include skulls and blood as well as sadomasochistic and biker culture influences such as studs, leather and chains.

53. There is nothing visually distinctive about the angular shape of an electric guitar. Countless musicians use electric guitars that are cut into an infinite variety of silhouettes and theme-based shapes. Slipknot's iteration of the electric rock guitar is not distinctive from this general expression.

54. Even if the Slipknot Costumes and Guitar were distinctive, which they are not, the Stage Fright Products and Guitars are not confusingly similar thereto.

55. As shown in Exhibits B and E and demonstrated in paragraphs 33 through 50, above, the only similarities between the Stage Fright Products and Stage Fright Guitar embodied in the Stage Fright Logo on the one hand and the Slipknot Costumes and Guitar on the other, is the inclusion of general elements inspired by the popular heavy metal rock, S&M and biker cultures. The precise expression of these very general and common themes by the respective parties is entirely dissimilar.

56. Even if, *arguendo*, the Stage Fright Products and Guitars and Slipknot Costumes and Guitar were confusingly similar, which they are not, any likelihood of confusion would be minimized by the presence of the Stage Fright Logo, which is prominently displayed along with each item sold by Rubie's in its Stage Fright line, and the Stage Fright Logo appears on the uniforms themselves.

B. The Stage Fright Products and the Slipknot Costumes are Sold Through Different Channels

57. Consumers will not think that the Stage Fright Products and Slipknot Costumes originate from the same source or that the Stage Fright Products are sponsored by or somehow affiliated with Slipknot because they are sold through different channels. Stage Fright Products are sold exclusively in retail, costume specialty and mass merchandisers, etc. The Stage Fright Products are always grouped together, including many masks not accused by Slipknot as infringing on its rights, and appear in association with the prominently displayed Stage Fright Logo. The Logo is even featured prominently on the Stage Fright uniforms. Stage Fright costumes and masks are always sold with Rubie's label, name and Clown Logo prominently appearing thereon.

58. Upon information and belief, Slipknot Costumes are sold at Slipknot concerts and performances, on the band's website, on the band's record label's website and on other websites catering to fans of heavy metal music generally and Slipknot in particular.

59. Accordingly, since Stage Fright and Slipknot use disparate channels of trade, there is no likelihood of confusion here because Stage Fright Products are not likely to be encountered in situations that would lead consumers to believe that they and the Slipknot Costumes originate from the same source, or are otherwise associated or connected with one another.

**C. The Degree of Caution Exercised by the
Typical Purchaser of Stage Fright Products is High**

60. The typical purchaser of Stage Fright Products exercises care in selecting its Halloween costume and mask. The Stage Fright consumer is a teenaged male who is shopping for a frightening or macabre costume to wear for Halloween. This individual may or may not listen to heavy metal music and may not even have an affinity for the hard edge of biker and heavy metal fashion. Most children select Halloween costumes and masks "against type" (i.e., it is the night of the year where the child dresses or acts "differently," than usual, after all it is a disguise of the child's personality.) The typical Stage Fright consumer is a casual purchaser who is looking for a costume to wear for one night who will likely exercise a high degree of selectivity in selecting a costume or mask.

61. The average purchaser of Slipknot Costumes exercises a great deal of caution in selecting a Slipknot mask or uniform. Upon information and belief, the typical purchaser is an avid Slipknot fan and a devotee of heavy metal music in general. Upon information and belief, the typical purchaser is just as likely to be female as male and is

extremely well-versed in all things Slipknot, including the history of the band, the band's musical and lyrical style, details about each of its present and former members, the band's overall look on stage as well as the types of masks each of the band's eight members wear. Upon further information and belief, the average consumer of Slipknot Costumes has attended Slipknot concerts, owns several of the band's albums and reads about them online. Since certain types of masks are associated with specific members of the band, the typical Slipknot fan will likely seek out the specific mask of his favorite Slipknot member.

62. Upon information and belief, an individual looking to purchase a Slipknot Costume also exercises a great degree of care due to the fact that he is already likely a fan of and knowledgeable about the Slipknot band. Accordingly, there is no likelihood of consumer confusion given that the degree of caution or care exercised by both Stage Fright consumers and Slipknot's typical customer is high.

D. Slipknot's Costumes and Guitar Are Not Famous or Widely Known

63. The purchasing public will not be misled as to the source or affiliation of Stage Fright Products because Slipknot is not widely known. While the band is known by a small subset of fans of the heavy metal genre (itself a subset of the rock music genre), the general public has likely never heard of or seen Slipknot. In addition, Slipknot is certainly not the first band to perform wearing costumes and theatrical makeup. Bands like the wildly popular Kiss have been performing in mask-like makeup, leather and studs for decades. Moreover, the Slipknot Costumes have not been uniquely used for a significant period of time. Accordingly, no significant good will presently exists in the mind of the public.

64. Similarly, the Slipknot Guitar is not a famous or well-known shape. There is certainly nothing distinctive about the angular shape of an electric guitar. Countless musicians use electric guitars that are cut into an infinite variety of angular and hard-edged shapes.

65. The Stage Fright Products and Guitars and the Stage Fright Logo do not conjure up images of Slipknot but rather of the tough, heavy metal rock band cultures associated with skateboarders, S&M, bikers and heavy metal rock bands.

**FIRST CLAIM
(Declaratory Judgment)**

66. Plaintiff repeats and realleges paragraphs 1 through 65 of the Complaint as if fully set forth herein.

67. Defendants' claims of infringement have created an actual, substantial and justiciable controversy between the parties.

68. Defendants have indicated their intention to commence an action for copyright infringement at some time in the future if Rubie's continues to sell the Stage Fright Products and use the Stage Fright Logo.

69. Plaintiff contends that the Stage Fright Products and Logo were independently created and that any similarities between them and the Slipknot Costumes or Guitar are based on the common and unprotectible theme of the heavy metal rock band culture. Plaintiff further contends that this common theme will necessarily yield trivial and random similarities, but that the Stage Fright Products nonetheless constitute a distinct expression of those ideas.

70. Plaintiff contends that the Stage Fright Products and Guitar do not infringe any copyright which Bravado or Slipknot may hold in the Slipknot Costumes or Guitar.

71. Plaintiff seeks a declaration that none of the Stage Fright masks, uniforms or Logo, or portions thereof, infringe the copyright in the costumes or guitar used by Slipknot members so that there will be no controversy clouding Plaintiff's rights to continue to market and sell the Stage Fright costume and mask line and by use of the Stage Fright Logo.

**SECOND CLAIM
(Declaratory Judgment)**

72. Plaintiff repeats and realleges paragraphs 1 through 71 of the Complaint as if fully set forth herein.

73. Defendants' claims of infringement have created an actual, substantial and justiciable controversy between the parties.

74. Defendants have indicated their intention to commence an action for trademark infringement at some time in the future if Rubie's continues to sell the Stage Fright Products and use the Stage Fright Logo.

75. Plaintiff contends that the Stage Fright Products and Logo do not create the likelihood of consumer confusion as to their source, origin, sponsorship or affiliation.

76. Plaintiff contends that the Stage Fright Products and Guitar do not infringe any trademark which Bravado or Slipknot may hold in the Slipknot Costumes or Guitar.

77. Plaintiff seeks a declaration that none of the Stage Fright masks, uniforms or logo, or portions thereof, infringe any trademark which Bravado or Slipknot may hold in any of the masks, uniforms or guitars used by Slipknot members so that there will be no controversy clouding Plaintiff's rights to continue to market and sell the Stage Fright costume line and use the Stage Fright Logo.

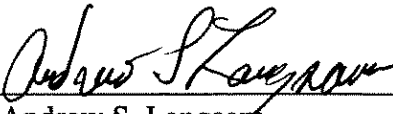
WHEREFORE, Plaintiff prays for judgment as follows:

(a) A Declaration that the Stage Fright Products and Logo do not infringe any copyright or trademark which Bravado or Slipknot may hold with respect to Slipknot uniforms, masks or guitars; and

(b) Such other and further relief as this Court may deem just and proper.

Dated: New York, New York
June 14, 2007

PRYOR CASHMAN LLP

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April 26, 2007

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AND NEW JERSEY BARS

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VIA FEDERAL EXPRESS

Rubie's Costume Company Inc.
1 Rubie Plaza
Richmond Hill, NY 11418

Re: Bravado International Group Merchandising Services, Inc. v. Rubie's
Costume Company, Inc.

Dear Sirs:

I am the attorney for Bravado International Group Merchandising Services, Inc., the licensee for the musical performers known as Slipknot.

We have discovered that you are distributing masks that are confusingly similar to the masks worn by members of Slipknot along with confusingly similar reproductions of Slipknot uniforms and a Slipknot logo. You have taken various elements of Slipknot's masks, uniforms and/or logos to lead consumers to believe that said masks, uniforms and/or logos relate to Slipknot. I enclose herewith 3 pages from your catalog that exhibit said items.

On page 264, there are confusingly similar copies of Slipknot's uniforms, a confusingly similar copy of one of the masks of Slipknot member, Joey Jordison (that you identify as Headbanger), and a guitar logo that is a confusingly similar reproduction of the guitar of Slipknot member, Mick Thomson. Said guitar logo is also on each of the uniforms.

On page 266, there are confusingly similar versions of the gas mask (Tear Gas) of Slipknot member, Sid Wilson, the pig mask (Pork Chop) of Slipknot member, Raul Gray, the Torture mask of Mick Thomson and the Goth mask of Slipknot member, James Root.

On page 267, the Mick Thomson guitar logo appears again with a confusingly similar version of the kabuki mask of Joey Jordison.

Rubie's Costume Company, Inc.
April 26, 2007
Page 2

Demand is hereby made upon you that you immediately cease and desist all manufacture, distribution, sale and commercial exploitation of any masks, uniforms, logos and/or items related to Slipknot.

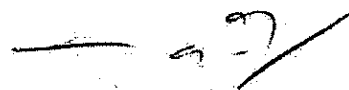
In addition, further demand is made that you forward to me the following:

- (a) All your present inventory of merchandise and advertising and promotional material which bear or comprise any copies and/or infringements of any articles related to Slipknot; and
- (b) A written statement of the total number of units of such merchandise you have sold to date and the total dollar amount you have received from such sales.

I look forward to your prompt response hereto.

This letter is written without waiver of or prejudice to any of my client's rights or remedies.

Very truly yours,



Kenneth A. Feinswog

KAF/kt

cc: Tom Bennett
Peter D'Auria
Eric J. Bender, Esq.

Exhibit B

RUBIE'S • STAGE FRIGHT



882968.
HEADBANGER
Printed jumpsuit with chain & stud
detailing and vinyl half mask with hair.
Sizes: M & L.



Stage Fright



8829
HEADAC
Printed jumpsuit with chain &
detailing and vinyl half mask with
Sizes: M



4434.
MUTE

4436.
PORK CHOP



4426.
TEAR GAS



4425.
TORTURE



4427.
GOTH



68145.
DEATH METAL
Deluxe Latex
Mask with Hair



68126.
DEMONIC PLAGUE
Deluxe Latex
Mask with Hair



68124.
UNHOLY ORPHAN
Deluxe Latex Mask



68125.
CORPSE MAKER
Deluxe Latex



68127.
RAGE
Deluxe Latex Mask

Exhibit C

RUBIE'S STAGE FRIGHT

882968.
HEADBANGER
Printed jumpsuit with chain & stud
detailing and vinyl half mask with hair.
Sizes: M & L.

Printed jumpsuit
detailing and vinyl

Exhibit D

